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VIRGINIA LAW REGISTER.

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Legal periodicals have begun again to discuss the whipping post, and the states of Maryland and Delaware are once more coming in for their share of odium which is attached to this "relic of barbarism." Few writers on the subject agree that the whipping post has *any* place among a civilized people, and even those who admit its efficacy would confine its use to punishment for wife beating. President Roosevelt in his recent message indicates that some form of corporal punishment should be meted out to a man who strikes the woman whom he has promised to love and protect, but it occurs to us that it is not so important to use this method of punishment for particular crimes as it is to use it for that class of criminals upon whom other modes of punishment have proven ineffectual. Punishment is not inflicted for vengeance's sake, but that the offender may be reformed and others may be deterred from committing crime. When the person neither reforms nor deters, it has failed in its purpose. Could there be any good reason why the whipping post should not be used in the case of a criminal upon whom imprisonment has been tried in vain? Our city jails are filled with men supported at public expense, who, time after time, have been sentenced to imprisonment for crime, and yet their punishment seems not to have had the slightest deterring effect. Criminals are of varied temperaments and the whip would often restrain where confinement has no terrors. Why should Virginia put herself to the great expense of supporting in jail these habitual criminals, when the lash would not only relieve the state of the expense but would often accomplish the more important result of causing the criminal to cease his career of lawlessness? We do not claim that the whipping post would in all cases be effectual, but we do claim that after a man, who has been repeatedly imprisoned, commits an-

other crime, the time has come *at least to try* some other form of punishment. The judges and justices of the commonwealth ought to have the discretion, after a criminal has been imprisoned three or more times, to order him to be whipped. Why continue to inflict upon a man that kind of punishment which has proven in his case to be without avail?

We agree that the whipping post should be used only in extreme cases and after milder means have been exhausted, but we are inclined to think that those to hold that the lash should never be used, are governed more by a mere sentimentality, than by consideration of the greatest good to the state and the criminal.

Pursuant to our desire to make the REGISTER as useful as possible to the busy practitioner, we have determined to give in this and succeeding issues the following matter:

1. A list of Virginia cases annotated in the American State Reports; 2. A list of Virginia cases annotated in Lawyers' Reports Annotated; 3. A list of Virginia cases annotated in Virginia Law Register; 4. A list of Virginia cases overruled by later decisions; 5. A list of Virginia cases overruled by statutes.

The usefulness of these features will be greatly increased if the practitioner will have the reference noted in his Virginia Reports on the margin of the page where the case is reported. He may then in using his reports ascertain at a glance whether a case has been commented on in any of the works above enumerated, or whether it has been overruled by a later decision or statute. In the study of a given case it is obviously of great value to know whether it has been annotated, and if so, to avail oneself of the collection of similar cases found in the notes, as well as of the comments of the annotator.

We can not hope to make a complete list of overruled cases, but we will publish such as we have collected and will ask the bar to point us to others. Thus we hope in time to gather a reasonably complete list. The importance of such a list will be readily recognized by those of us who have suffered the agonies of mortification, which comes to one, who, in the midst of his argument, boldly rests his cause on "the most able and cogent opinion in — v. —," only to be informed by opposing counsel or the court that the case

has been overruled by a later case or by statute. Then it is that we feel like "the foolish man who built his house upon the sand."

In this issue we give the list of cases annotated in the American State Reports.

Sec. 1105a (2) Va. Code Anno. provides that the names of companies incorporated under that section shall be such as to distinguish them from any other corporation engaged in a similar business, etc.

Under this provision the application for incorporation by the Bank of Richmond was resisted by the Savings Bank of Richmond on the ground that the former name was not such as to distinguish it from the latter. The commission decided against the complainant, and the question now arises whether an appeal lies from the decision of the commission, or whether the complainant is put to its common law remedies. Under the Constitution, the commission has only to ascertain whether the applicants for the charter have, by complying with the requirements of law, entitled themselves to a charter, and to issue or refuse the same accordingly. (Va. Const., sec. 154.)

Thus it would seem that while the Constitution has made the duty of the commission purely ministerial, yet the duty seemingly imposed by the statute, to-wit, the decision of the question of whether the name of one corporation is such as to distinguish it from another, involves the exercise of a function in its nature judicial.

We are indebted to Justice Lamar of the Supreme Court of Georgia for an interesting piece of history, which perhaps explains the existence in our state Constitution of sec. 52 requiring that the object of an act shall be expressed in its title. The General Assembly of Georgia, after the Revolution, passed an act "for the payment of the late state troops." The act, which contained a provision voting away a large portion of the public lands, was smuggled through the Legislature without its true purpose having been discovered. This act, known as the "Yazoo Act," was attacked as unconstitutional, but the Supreme Court of the United States, in *Fletcher v. Beck*, 6 Cranch. 87, upheld the law. This resulted in the provision inserted in the Georgia Constitution of 1798 that "no law should be passed con-

taining any matter different from what is expressed in the title thereof." It seems that this was the first provision of the kind to be found in any state constitution. Neither the Constitution of the United States or the older constitutions of the thirteen original colonies contain any such restriction, although nearly all of the more recent constitutions of the old as well as the new states have the same or an analogous provision. Hence there has naturally grown up around the provision a mass of learning to which the courts of many states have contributed and which will be valuable in determining the not infrequent question of whether acts of our General Assembly comply with the constitutional provision referred to. The Virginia decisions on this point are gathered by our associate, Mr. Garnett, in his article on p. 106 (June number).

The proprietors of the REGISTER have made arrangements with Mr. Henry A. Minor of the Lynchburg bar to edit an index volume for the first ten volumes of the LAW REGISTER.

General Index to the Register. We believe Mr. Minor's work will prove of special value to the Virginia practitioner, for the

volumes of the LAW REGISTER under the Burks, Graves, Lile and Bryan were great storehouses of useful information and observations concerning Virginia law. The tenth volume will be completed with the April issue, and the index will follow shortly thereafter.

No more just nor timely statute has been recently passed than that making it a misdemeanor to desert without just cause or to wilfully neglect to provide for the support of a wife or minor children in destitute circumstances. Statutes of

Non-Support. similar nature have long existed in some of the other states. Those who have the management of the almshouse in larger cities of the state and those engaged in charity work, especially among children, know of the surprisingly large number of able-bodied men who leave their wives and children to scuffle as best they may or to be supported by the charity of others. Such men should be taught the duty which they owe to their families and to the state, and the statute is already doing valiant work in that direction. (See Va. Code Ann., sec. 3795c.)